IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

ORDER

Dinesh Mewara Vs. State of Raj. & others

S.B.CIVIL WRIT PETITION NO.2470/2006

Date of order : 15th May 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.D.C.Sharma for the petitioner

BY THE COURT:

By way of this writ petition, the petitioner, a licensee for country liquor retail shop at Ward No.6 Sojat City seeks to challenge the notification dated 09.05.2006 issued by the District Excise Officer, Pali inviting offers for the purpose of transferring country liquor group of Ward No.10 of Takhatgarh Municipality to Sojat Municipality.

According to the petitioner, the Government proceeded to establish ward-wise liquor shops in various areas of Pali District for the excise settlement year 2006-2007. In the area of Sojat Municipality, the shops were established in its Ward Nos.4,6,14 and 18. The petitioner was allotted a shop in Ward

No.6 in the lottery drawn on 03.03.2006 on an annual amount of Rs.6,75,120/- and the order in that respect was issued on 28.03.2006 (Annex.A/2). The petitioner has also placed on record the orders issued in relation to other licensees for Ward Nos.18, 14 and 4 as Annexures A/3, A/4 and A/5 respectively. According to the petitioner, all the allottees have deposited the required amount and are carrying on their business. On 09.05.2006, the petitioner came across the impugned notification advertised in the newspaper whereby tenders were invited from the persons who wanted to get shifted the shop of Ward No.10 of Takhatgarh Municipality in the area of Sojat Municipality other than the aforesaid Ward Nos.4,6,14 and 18 and the tenders were to be finalised on 12.05.2006.

The petitioner has assailed this invitation of tenders for getting the shop in Ward No.10 of Takhatgarh shifted to the area of Sojat as wholly without jurisdiction, unconstitutional and contrary to the rules. With the submissions that though he has no fundamental right to deal in business of liquor, yet he has right of equality, the petitioner has urged that the Government having already divided the entire District of Pali ward-wise and the shops having been allotted for the year 2006-2007 and fees thereof having been paid by the respective allottees, the respondent No.2 has arbitrarily invited

options to get the shop of Ward No.10 of Takhatgarh transferred to Sojat; and such an action is violative of Article 14 of the Constitution of India. The petitioner has alleged that the Government having fixed the shops in four wards of Sojat, he had obtained allotment and made investments and such transfer would cause prejudice to him. It has been suggested that the Excise Commissioner had earlier issued orders for permitting transfer only with the consent of prior allottees but without calling for any objection from the petitioner, and without any opportunity of hearing, the shop of Takhatgarh is sought to be transferred to Sojat; and that only Sojat has been chosen for such transfer without any basis and such an action is discriminatory too.

Making submissions on behalf of the petitioner, learned counsel Mr.D.C.Sharma has relied upon an order passed by this Court on 14.12.2005 in S.B.Civil Writ Petition No.4906/2005 : Chhaganlal Gangwani & anr. Vs. State & others and submitted that such transfer of shops, from the Municipal Area of Jodhpur to Municipal Area of Bilara, was stayed by this Court and the interim order was confirmed on 14.12.2005 after hearing all the parties.

Having heard learned counsel for the petitioner and having perused the material placed on record with reference to the law applicable, this Court is clearly of opinion that this writ

petition remains meritless and deserves to be dismissed.

So far the case of Chhaganlal Gangwani in writ petition No.4906/2005 is concerned, therein the respondent No.4 applied for and was allotted a particular shop in Zone No.5 of Municipal Area of Jodhpur. The said licensee made representation to the Excise Authorities that he was unable to open the shop at the area in question for which the licence was granted to him and, therefore, requested for permission to shift his shop to Bilara area. This request was acceded to by the Department but was put to challenge before this Court by the existing licensees of Bilara area, inter alia, on the grounds that shifting of shop from the area of Jodhpur to Bilara was violative of tender conditions and would directly affect the terms of contract of the petitioners. It was contended on behalf of the respondents that the licensee could not get proper shop in the zone for which he had applied and, therefore, he made a request for allowing him to shift the shop to Bilara and his case was recommended by the District Excise Officer and was approved by the Excise Commissioner. The Department contended that in order to avoid revenue loss to the government, it was thought proper to permit shifting of shop from Jodhpur to Bilara and the action of the Excise Commissioner was sustainable in view of Rule 75 of the Rules of 1956. It was found by this Court that the impugned order

was passed on 12.08.2005 but the writ petition was admitted on 22.08.2005 and the order of transfer of shop was stayed. It was also observed that the licences were granted for the financial year 01.04.2005 to 31.03.2006 and the respondent No.4 had admittedly applied for and was granted licence for opening of the shop in Jodhpur and he ought to have started the shop within reasonable time. It was noticed by this court that sub-rule (3) and (4) of Rule 75 provide for shifting of already approved location i.e. shifting of an existing shop but in the said case, the respondent failed to get the location approved at all and then the Excise Commissioner proceeded to grant sanction on 04.08.2005, nearly four months from the date of commencement of licence. It was also noticed while passing the order on 14.12.2005 that the licence in question was valid upto 31.03.2006 only. As a cumulative effect of such facts and circumstances, this Court was of opinion that no case was made out for vacating the interim order and hence the application under Article 226 (3) of the Constitution of India was rejected. The facts as well as circumstances for passing of the order dated 14.12.2005 are hardly of any relevance so far the subject matter of present case is concerned.

In the present case, it appears from the notification Annexure-A/6 that the shop of Takhatgarh Ward No.10 has remained unlifted although for Takhatgarh itself, there had been two more groups at Ward No.4 and Ward No.6 (Items No.35 and 36 in Annexure-A/1). Finding a particular group having remained unlifted, if the District Excise Officer in the interest of State Revenue has attempted to make settlement by permitting another shop in other areas of the District, it cannot be said that such an action is without jurisdiction or arbitrary; nor the petitioner as a licensee of Ward No.6 of Sojat could claim any such right for which settlement of liquor shops by the authorities could be denied or restricted. The petitioner has not placed his licence on record to show any such term or condition of the licence being available with him for which he could seek restriction on the respondents in not permitting other shop/shops to be opened in a particular area.

Moreover, so far Ward No.6 of Sojat is concerned, for which the petitioner has been extended the licence, no other shop is sought to be permitted in that area. In fact, offers have been invited from the persons if they were interested in getting the shop of Takhatgarh Municipality transferred to other wards of Sojat Municipality, other than Ward Nos.4,6,14 and 18. The offer is still subject to the approval of Excise Commissioner and it has also been stated that the highest

offer, but minimum 50% above the annual amount of Takhatgarh shop, would be referred for approval. The said shop of Takhatgarh having remained unlifted, if in the interest of State Revenue, licence meant therefor if is sought to be provided at another place, the same cannot be said to be without authority of law nor the petitioner could be acceded any right to question the decision of the Excise Authorities in relation to other shops. Shifting of an existing shop at the request of a licensee, as was the case in Chhaganlal Gangwani's petition is a matter entirely different and give rise to an arguable question. However, shifting of an unlifted shop or group or carving out any modality so as to curb against the likely revenue loss cannot be said to be arbitrary or unauthorised.

Learned counsel submitted that picking up only Sojat City for the purpose of such transfer amounts to discrimination. Such ground of discrimination is fundamentally baseless. It being a matter of liquor contract, the principles of Article 14 of the Constitution of India do not apply. Further more, when the shop is sought to be transferred, it shall nevertheless have to be transferred to some other place and such choice of place cannot be questioned by a nearby licensee as discriminatory, else the transfer would obviously become an impossibility.

In any case, the petitioner having failed to show any legal or contractual right for which he could obstruct settlement in relation to other shops, may be by way of transfer to a nearby area to his licensed location; no case for interference under Article 226 of the Constitution of India is made out.

The writ petition remains meritless and is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

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